IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10449 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRA AMRUTLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10449 of 2004

MR DHIRENDRA MEHTA for Petitioner No. 1-2

Mr. PR Abichandani, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3-6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 24/01/2005

ORAL JUDGEMENT

Though notice was issued for final disposal and the same has been served, no one appears on behalf of the private respondents.

2. Rule. Shri PR Abichandani, learned AGP waives

service of on behalf of respondents No. 1 and 2. With the consent of the parties the matter is taken up for final hearing doay.

3. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 13th July 2004 in Revision Application No. 90 of 2002 in dismissing the same and confirming the order passed by the Collector, Surat dated 28th June 2002 in RTS Revision Application No. 93/2001 in respect to Revenue Entry No. 346 with regard to land bearing Survey No. 63/2, Block No. 184, situate at Village Sarsana, Taluka-Choryasi, District-Surat.

4. It appears from the record that the petitioners purchased the aforesaid land in question and necessary entry to that effect was also mutated in the Record of Rights being Revenue Entry No. 346 dated 13th September 1995. As the Collector, Surat was of the opinon that the transaction between the petitioners and the original landowners was hit by the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 {"the Tenancy Act" for short} as well as the Bombay Prevention of Fragmentation and Consolidation of Holdings Act {"the Fragmentation Act" for short}, the aforesaid Entry came to be taken under suo motu revision being RTS Revision Application No. 93 of 2001. The Collector, Surat, after giving opportunity to the petitioner as well as original-owners, set aside the Entry No. 346 by his order dated 15/28th June 2002 by holding that by virtue of the aforesaid transaction there will be breach of Secton 7 of the Fragmentation Act as well as Section 63 read with Rule 36(1)(f) of the Tenancy Act.

4.1. Being aggreived and dissatisfied with the order passed by the Collector, Surat, dated 15/28th June 2002 in RTS Revision Application No. 93/2001, the petitioners preferred revision application before the State Government, i.e., Secretary (Appeals), Revenue Department which was numbered as Revision Application No. 90/2002. The Secretary (Appeals), Revenue Department, by judgment and order dated 13/22nd July 2004 dismissed the revision application confirming the order passed by the Collector, Surat, dated 15/28th June 2002 in RTS Revision Application No. 93 of 2001, which has given rise to the present petition under Article 226/227 of the Constitution of India.

5. Shri Dhirendra Mehta, learned advocate appearing

on behalf of the petitioners, relying upon the judgment of this Court in the case of Evergreen Apartment Cooperative Housing Soc. Vs. Special Secretary (Revenue), reported in 1991(1) GLR 113, and another judgment of this Court in the case of Janardhan D. Patel vs. State of Gujarat, reported in 1997(1) GLR Page 50, has submitted that while exercising power under the provisions of Bombay Land Revenue Code in RTS proceedings the Revenue authority could not have examined the provisions of another enactment eventhough the very Officer may be exercising power under another enactment. It is therefore further submitted that the impugned order passed by the Collector, Surat and confirmed by the Secretary (Appeals) is as such without jurisdiction and requires to be quashed and set aside. Shri Mehta, learned advocate for the petitioner has fairly submitted that as such the entry in question is already set aside by the order passed by the Collector, Surat and the order passed by the Collector, Surat is already given effect to. It is also further submitted that during the pendency of the present proceedings, the Additional Mamlatdar and ALT, Choryasi, Surat has already passed an order in Tenancy Case No. 138/2002/Sarsana under Section 84-C of the Tenancy Act, and an order is already passed vesting the land in question in the Government and against which the petitioners have already challenged the said decision before the Deputy Collector, Choryasi Prant, Surat by Tenancy Appeal No. 159/2003. It is also further submitted that even the original landowners had also challenged the said order by way of filing Tenancy Appeal No. 152 of 2003 and both the appeals are pending. It is also further submitted by Shri Mehta that the Deputy Collector, Surat has already initiated proceedings for breach of provisions of Fragmentation Act being Fragmentation Case No. 13/2003 and the same is also pending. It is submitted that in view of the order passed by the Secretary (Appeals) rejecting the revision application, now both the aforesaid authorities will be influenced by the observations made by the Secretary(Appeals) an appropriate order be passed directing the aforesaid authorities to pass appropriate order in accordance with law and on merits without in any way being influenced by the observations made by the Secretary (Appeals) in the impugned order dated 13/22.7.2004 in REvision Application No. 90/2002.

6. Shri PR Abichandani, learned AGP appears on behalf of the respondent State Government. He has relied upon the judgment of this Court in the case of Jayantilal Jethalal Soni rendered in Special Civil Application No. 12547 of 2004 and submitted that the entry if any is

always subject to the ultime outcome of the proceedings by the competent authority under a particular enactment of which breach is alleged and therefore it is always open for the appropriate authorities to decide and consider the breach of a particular enactment and/or Act in accordance with law and on merits. Therefore he has requested to pass appropriate order making suitable observations.

7. Heard the learned advocates appearing on behalf of the parties. Considering the judgments of this Court in the aforesaid cases, i.e. Evergreen Apartment Cooperative Housing Society (supra) and Janardhan D. Patel (supra) and also considering the latest judgment of this Court in the case of Jayantilal Jethalal Soni (supra), if following directions are issued it will meet the ends of justice.

(1) Entry No. 346 which is now cancelled pursuant to the order passed by the Collector, Surat dated 15/28 June 2002 in RTS Revision Application No. 93/2001 would be subject to ultimate outcome of the proceeding pending before the Deputy Collector,Choryasi Prant in Tenancy Appeal No. 159/2003 (with regard to breach of provisions of Tenancy Act) and also subject to proceedings pending before the Deputy Collector, Surar being Fragmentation Case No.13/2003 (with regard to breach of Fragmentation Act) and the Revenue authority is directed to give effect to ultimate outcome of the aforesaid proceedings. The Deputy Collector, Choryasi Prant, as well as Deputy Collector, Surat, while considering the proceedings for breach of the provisions of the Tenancy Act as well as the Fragmentation Act respectively are directed to consider the same strictly in accordance with law and on merits and without in any way being influenced by the observations made by the Secretary (Appeals) in his judgment and order dated 13/22.7.2004 rendered in Revision Application No. 90 of 2002.

8. With this observation and direction, the Special Civil Application is disposed of accordingly.

[M.R. Shah, J.]

rmr.